No. 14,915

IN THE

United States Court of Appeals

For the Ninth Circuit

FLORENCE ALICE PAQUET,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

BRIEF FOR APPELLANT.

O. P. SOARES,
230 McCandless Building, Honolulu 3, Hawaii,
Attorney for Appellant.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

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STATEMENT RE JURISDICTION.

Appellant was duly indicted (R. pp. 3 and 4) and ied in the District Court for the District of Hawaii ı the charges of violating sections 1542 and 911 as ıe same are to be found in Title 18 of the United tates Code.

After trial by jury which resulted in a verdict of ıilty (R. pp. 7 and 8), she perfected her appeal this Court in conformity with the provisions of 3 USC Section 1291 (R. pp. 10-12).

STATEMENT OF THE CASE.

To support the allegations of the indictment, amely: that on or about August 16, 1954, and again

on or about March 30, 1955, appellant made false statements as to her place of birth and falsely represented herself to be a citizen of the United States (R. pp. 3 and 4), there were offered, and received, in evidence the following exhibits:

Exhibit No. 1: Certificate of nonexistence of citizenship record.

Exhibit No. 2: Purporting to be a photostat copy of application for passport dated August 17, 1954.

Exhibit No. 3: Application for passport dated August 17, 1954.

Exhibit No. 4: United States passport.

Exhibit No. 5: Canadian passport.

Exhibit No. 6: Statement of Florence Alice Paquet (appellant).

Objection was made and overruled as each of the foregoing exhibits was offered in evidence. Later the appellant moved to strike them (R. pp. 123-127). The motions were denied in each instance.

The admission of these exhibits was included in the several grounds for a judgment of acquittal (R. p. 127). The court reserved its ruling on this motion. Following the jury's verdict of guilty, the court denied appellant's motion for a judgment of acquittal (R. p. 147).

In addition to the claimed inadmissibility of Exhibits Nos. 1 to 6, inclusive, the motion for a judgment of acquittal raised the following questions, namely:

(a) Failure of the evidence to sustain all the aterial allegations of the indictment.

(b) Inadmissibility of the evidence, both written d documentary, of admissions and confessions of pellant.

The only additional question involved arises out the court's refusal to instruct the jury to the effect at Hawaii, Guam and Wake are parts of the United ates, and that a passport is not required for travel and from them. Such an instruction was sought appellant in "Defendant's Requested Instruction o. 18" and refused (R. p. 7).

SPECIFICATION OF ERRORS RELIED UPON.

1. The admission in evidence of Exhibits Nos. 1 5, inclusive, and of each of them, was erroneous.

2. The admission in evidence of testimony as to al admissions and confessions and of the written atement of appellant (Exhibit No. 6) was erroneous.

3. The refusal of defendant's requested instruction o. 18 was erroneous.

4. The overruling of the motion for a judgment acquittal was erroneous.

SUMMARY OF ARGUMENT.

I.

The admission in evidence of Exhibits 1 to 5 inclusive, and each of them, was erroneous.

No conviction under Counts I and II of the indictment could be had without legal proof that appellant was not born at Barre, Vermont.

No conviction under Counts III and IV could be had without legal proof that she was not a United States citizen either by birth or naturalization.

Since Exhibits 1 to 5, inclusive, were erroneously received in evidence, the conviction cannot be upheld.

II.

In the absence of proof of the *corpus delicti* and corroboration, statements in the nature of admissions and confessions cannot be lawfully used to procure a conviction.

III.

Since it was necessary to a conviction that the jury find beyond all reasonable doubt that the so-called "passport" was in fact and in law a passport, defendant was entitled to have the jury instructed that passports are not required for other than foreign travel.

IV.

Because of the errors complained of, the appellant was entitled to a judgment of acquittal.

SPECIFICATION NO. 1.

HE ADMISSION IN EVIDENCE OF EXHIBITS NOS. 1 TO 5 INCLUSIVE, AND OF EACH OF THEM, WAS ERRONEOUS.

Exhibit No. 1 was offered to show the nonexistence a record of defendant's naturalization as an Amerian citizen.

> A written statement signed by an officer having the custody of an official record or by his deputy *that after diligent search* (emphasis added) no record or entry of a specified tenor is found to exist in the records of his office accompanied by *a certificate as above provided* (emphasis added) is admissible as evidence that the records of his office contain no such record or entry.
>
> Rules of Federal Procedure, Rule 44b.

What the certificate is which is referred to in Rule 4b as set forth next above is designated in the openg sentence of Rule 44a, which reads, "An official ecord or an entry therein when admissible for any urpose, may be evidenced by an official publication ereof or by a copy attested by the officer having e legal custody of the record or by his deputy and *ccompanied with a certificate that such officer has e custody.*" (Emphasis added.)

Further provision of Rule 44a is that the certificate ay be made in one of two ways: (1), "by a judge a court of record of the district or political subivision in which the record is kept authenticated by e seal of the court," or (2), "by any public officer aving a seal of office and having official duties in e district or political subdivision in which the ecord is kept, authenticated by the seal of his office."

The statement which is part of Exhibit 1 purports to be signed by one H. L. Hardin who describes himself as "Chief, Records Administration and Information Service."

It is accompanied by a "certification" purporting to be signed by one E. A. Loughran who describes himself as "Assistant Commissioner, Administrative Division, Immigration and Naturalization Service."

Neither of these signatures was proved at the trial. The only seal appearing on any of the papers comprising Exhibit 1, is one which reads "Department of Justice, Immigration and Naturalization Service."

The "certification" does not certify that the person purporting to make the certificate of nonexistence of record (Hardin) had custody of the records among which the record sought would normally be found. Such a statement is specifically required by Rule 44a to be included in the so-called "certification."

The statement of Hardin which he denominates, "Certificate of Non-Existence of Citizenship Record", falls short of the prime requisite that it was made "after *diligent* (emphasis added) search." (Rule 44b.) Indeed, it does not appear that any search, diligent or otherwise, was made.

As to Exhibits 2 and 3. These were not accompanied with a certificate that "the officer from whose custody they purport to come, has the custody thereof." That such a certificate is necessary for their admission in evidence is clear from the unequivocal language of Rule 44a, particularly the last phrase of the first sen-

ıce, namely, "and accompanied with a certificate ıt such officer has the custody."

Exhibits 4 and 5 are respectively American and nadian passports. They were taken from the de- ıdant while she was unlawfully in custody under cumstances which were in violation of her rights der the Constitution to be secure in the possession her papers and against self crimination.

Upon arriving at Honolulu from Guam by air, de- ıdant was accosted by custom inspector James ɛane and detained in a room at the Honolulu Air- rt (R. pp. 65-66).*

She was later permitted to go to her home at 288-A ai Mani Way in Honolulu and shortly thereafter

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*R. p. 65:

Q. (By Mr. Dwight). Where did you see the defendant on March 30, 1955? Where did you see her?

A. Honolulu Airport.

Q. And how did it happen that you saw her? What caused you to see her?

A. She arrived on a Pan-American plane and I happened to be inspecting the arrival of the passengers that morning, and she was one of them.

Q. Now, Mr. Keane, how is it that you recall her? There were a lot of people on the plane.

A. I recall her because of the fact that I had a radiogram concerning——

Mr. Soares. We object to any hearsay.

A. (Continuing). I recall her because of the fact that she was one of the first several that came in and upon the presentation of a U. S. passport I put it in my pocket and asked her to wait until I called for her later and sent her back out in the waiting room and did not inspect or talk to her until the last person had been taken care of, had been inspected.

Q. Now, did you have any conversation with the defendant?

A. I did.

Q. And what were those conversations about?

A. The conversation was concerning the passport and why she had left Guam.

George Elms, an investigator with the Department of Justice, Bureau of Immigration and Naturalization put in his appearance. Under pressure (the witness himself described it so, using the language "pressed the issue." R. p. 89), he obtained the two passports, Exhibits 4 and 5. Thereafter he took her down to the Immigration station where he procured a statement which later, over objection by defendant, was admitted in evidence as Exhibit No. 6.

Having secured the passports, Exhibits Nos. 4 and 5, and the confession, Exhibit No. 6, under the circumstances outlined above, a charge involving matters and things therein referred to was lodged against this defendant. The specific charge was falsely claiming United States citizenship when making an entry into the United States at Honolulu. When the defendant presented herself for sentence, having some days previously plead guilty, without benefit of counsel, the Chief Judge of the United States District Court of Hawaii, discharged the defendant (See *United States v. Paquet,* 131 F. Supp. 32). It was only after that action that the instant case was instituted and prosecuted.

SPECIFICATION NO. 2.

E ADMISSION IN EVIDENCE OF TESTIMONY AS TO ORAL ADMISSIONS AND CONFESSIONS AND OF THE WRITTEN STATEMENT OF APPELLANT (Exhibit No. 6) WAS ERRONEOUS.

To the receiving in evidence of the admissions and nfessions defendant objected on the ground that same were made under duress, the appellant be- in custody and restrained of her liberty without e process of law; that there had not been any proof the *corpus delicti;* and that there was no corroboran of statements made by the defendant.

The written admissions and confessions are Exbit 6 (R. pp. 111-120).

The oral testimony referred to is included in the dence of James Keane (R. pp. 64-74) and of orge Elms (R. pp. 82-95).

Keane said in effect that at the Honolulu Airport, on presentation (inferentially to him by the deidant) of a United States passport he put it in his cket and required her to remain in a room until had "taken care of", that is, "inspected" the last rson on the arriving airplane whereupon, in reonse to questions asked by him (he at the time wear- his badge of office where it could be seen), she d him that the passport he had in possession was rs and that she was born in Barre, Vermont.

Elms testified in effect that he, an investigator with e Department of Justice, Bureau of Immigration d Naturalization at Honolulu (R. p. 74) identified mself as such investigator and, in answer to quesns put by him, appellant turned over to him her

United States passport and said she was born in Canada and was a citizen thereof; that she had arrived at Honolulu that morning with a United States passport which he took into possession. Thereafter he "took her down" (R. p. 95) to the Immigration station; that his taking her into custody and keeping her at the Immigration station resulted in her being charged criminally before Judge McLaughlin, Chief Judge of the United States District Court for Hawaii, who dismissed the case for the reason that the acts of the appellant then complained of did not constitute the crime charged. His testimony went on to show that no warrant of arrest had been procured or served on appellant until after she had signed the written statement, Exhibit No. 6.

Forte v. United States, 94 F. 2d 236 at page 240 is authority in support of appellant's contention that "there can be no conviction of an accused in a criminal case upon an uncorroborated confession" and of the further rule represented by what the court expressly said it thought represented the weight of authority and the better view in Federal Courts, that such corroboration is not sufficient if it tends merely to support the confession, without also embracing substantial evidence of the *corpus delicti* and the whole thereof.

An accused person's extrajudicial admissions of essential facts or elements of crime if made after commission of the crime are of same character as confessions and corroboration should be required.

Opper v. United States, 348 U.S. 84 (head note 3).

The general rule that an accused may not be convicted on his own uncorroborated confession has previously been recognized by this Court, *Warszawer v. United States,* 159 U.S. 487; cf. *Miles v. United States,* 103 U.S. 304, 311-312, and has been consistently applied in the lower federal courts and in the overwhelming majority of state courts, 127 ALR 1130; 7 Wigmore, Evidence, sec. 2070-2072. Its purpose is to prevent "errors in convictions based upon untrue confessions alone," *Warszower v. United States, supra,* at 347; its foundation lies in a long history of judicial experience with confessions and in the realization that sound law enforcement requires police investigations which extend beyond the words of the accused. Confessions may be unreliable because they are coerced or induced, and although separate doctrines exclude involuntary confessions from consideration by the jury, *Brown v. United States, supra, Wilson v. United States, supra,* further caution is warranted because the accused may be unable to establish the involuntary nature of his statement. Moreover, though a statement may not be "involuntary" within the meaning of this exclusionary rule, still its reliability may be suspect if it is extracted from one who is under pressure of a police investigation,—whose words may reflect the strain and confusion attending his predicament rather than a clear reflection of his past.

Smith v. United States, 348 US. 147, 152-153.

The need for corroboration extends beyond complete and conscious admission of guilt,—a strict confession. Facts admitted that are immaterial as to guilt or innocence need no dis-

cussion. But statements of the accused out of court that show essential elements of the crime, here payment of money, necessary to supplement an otherwise inadequate basis for a verdict of conviction stand differently. Such admissions have the same possibilities for error as confessions. They, too, must be corroborated.

Opper v. United States, 348 U.S. 84, 91.

SPECIFICATION NO. 3.

THE REFUSAL OF DEFENDANT'S REQUESTED INSTRUCTION NO. 18 WAS ERRONEOUS.

For convenience's sake the requested instruction is again set forth.

Defendant's Requested Instruction No. 18.

> No person lawfully in the United States, whether citizen thereof or alien, is required to have a passport in travelling from one part of the United States to any other part thereof.
>
> And in this connection I instruct you that at all times referred to in the indictment defendant was lawfully in the United States and that Hawaii, Guam, and Wake are parts of the United States (R. p. 7).

All counts of the indictment grow out of a single transaction, namely: procurement of a passport by defendant, for travel between Hawaii and Guam.

Admittedly such a passport is wholly unnecessary.

SPECIFICATION NO. 4.

THE OVERRULING OF THE MOTION FOR A JUDGMENT OF ACQUITTAL WAS ERRONEOUS.

We urge that the motion for judgment of acquittal uld have been granted. This is demonstrated by argument in support of Specifications Nos. 1, 2, l 3, and each of them.

CONCLUSION.

The appellant contends that for the reasons set th above the verdict should be set aside and a v trial granted.

Dated, Honolulu, Hawaii,
March 19, 1956.

Respectfully submitted,
O. P. SOARES,
Attorney for Appellant.